

THE PROSECUTOR GENERAL
versus
NYASHA DUMBU
and
HEATHER RUVIMBO DUMBU
and
DANBRO HOLDINGS (PVT) LTD
and
REGISTRAR OF DEEDS

29 FEBRUARY 2024 and 15 May 2024

Opposed Application

C Mutangadura, for the applicant
No appearance for the 1st, 3rd and 4th respondents.
C Damiso, for the 2nd respondent

CHIKOWERO J

INTRODUCTION

[1] The applicant has proved, on a balance of probabilities, that the undivided 1 8668% share number L8 in a certain piece of land situate in the district of Salisbury called stand number 2485 Arlington Estate measuring 2.4 hectares held under Deed of Transfer registered Number 3113/2017 dated 10 August 2017 is tainted property. It is forfeited to the State.

THE PARTIES

[2] The applicant is the Head of the National Prosecuting Authority. She is empowered at law to apply for an order for the civil forfeiture to the State of tainted property.

[3] The first respondent is a male adult who, at the time material to this judgment, was employed as an Assistant Finance Manager at NMB Bank, Zimbabwe. The first and second respondent are spouses.

[4] The third respondent is a company duly registered in terms of the laws of Zimbabwe. It is a property development company that supervises the Arlington Township, Salisbury project. It sold the property, the subject of this judgment, to the first and second respondents.

[5] The fourth respondent is the Registrar of Deeds. He registered title in the property in question in favour of the respondent

THE APPLICATION

[6] This is an application for an order for civil forfeiture of the said property. It is brought in terms of ss79 and 80 of the Money Laundering and Proceeds of Crime Act [Chapter 9:24] (“the Act”)

THE LEGAL PRINCIPLES

[7] An application for civil forfeiture can be sought in respect of property that is suspected to be tainted. See s 79(1) of the Act.

[8] However, for the court to grant the order the applicant must prove on a balance of probabilities that the property is tainted property.

[9] In order to satisfy the Court that the property is proceeds of a serious offence it is not necessary to show that the property was derived directly or indirectly, in whole or in part, from a particular serious offence, or that any person has been charged in relation to such an offence. All that needs to be proved is that it is proceeds from some conduct constituting or associated with the serious offence.

[10] An application for civil forfeiture may be made in respect of property into which original proceeds have been converted either by sale or otherwise. See 80 (4) of the Act

[11] Section 2 of the Act defines “proceeds” and “proceeds of crime” as follows:

“means any property or economic advantage derived from or obtained directly or indirectly through the commission of a criminal offence, including economic gains from the property and property converted or transformed, in full or in part, into other property.”

[12] Section 8 deals with the money laundering offences. It provides:

“8 Money laundering offences

(1) Any person who converts or transfers property –

- (a) that he or she has acquired through unlawful activity
or knowing, believing or suspecting that it is proceeds of crime; and

- (b) for the purpose of concealing or disguising the illicit origin of such property, or of assisting any person who is involved in the commission of a serious offence to evade the legal consequences of his or her acts or omission; commits an offence.
- (2) Any person who conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing or suspecting that such property is the proceeds of crime, commits an offence.
- (3) Any person who acquires, uses or possesses property knowing or suspecting at the time of receipt that such property is the proceeds of crime, commits an offence.
- (4) Participation in, association with, conspiracy to commit, an attempt to commit, and aiding , abetting, facilitating and counselling the commission of any of the offences referred to in subsections (1), (2) or (3) is also an offence.
- (5) Knowledge, suspicion, intent or purpose required as elements of an offence referred to in subsections (1), (2) ,(3) and (4) may be inferred from objective factual circumstances.
- (6) In order to prove that property is the proceeds of crime, it is not necessary for there to be a conviction for the offence that has generated the proceeds, or for there to be a showing of a specific offence rather than some kind of criminal activity or that a particular person committed the offence.”

THE FACTS

[13] Between January 2021 and April 2021 the first respondent whilst on duty as the Assistant Finance Manager at NMB Bank Zimbabwe, Borrowdale branch, Harare connived with Arthur Munhuuripi, an accounts clerk, to steal ZW \$23 425701-96 from the bank.

[14] The first respondent’s duties included approving payments before the bank effected same while Munhuuripi’s duties, among others, encompassed capturing payments made by his employers.

[15] The *modus operandi* employed by the duo was that Munhuuripi raised fraudulent payment instructions purporting that organizations called Vertcord Investments and Simrac Enterprise had rendered certain services to NMB Bank Zimbabwe and were entitled to receive payment which, on four occasions, totalled ZWL\$23 425 701.96. The first respondent approved the payments. Once the payments landed in Vetcord Investments and Simrac Enterprise’s accounts the money was withdrawn and handed over to the first respondent and Munhuuripi.

[16] These facts setting out the theft and how it was committed are contained in the applicant’s founding affidavit as read with the affidavits of the investigating officer (Detective Assistant Inspector Precious Temba), the NMB Bank Zimbabwe Chief Risk Officer (Ashley Keith Fushani) and the bank’s Finance Manager, Washington Gatsi. These facts have not been controverted.

[17] Indeed, pursuant to the discovery of the offence in April 2021, Munhuuripi was arrested and

made to appear before the Magistrates Court to answer fraud and money laundering charges. His co-accused, the first respondent, could not be arrested and brought before the court to face similar allegations. Why was this so? The first respondent, without resigning from his job as Assistant Finance Manager NMB Bank Zimbabwe Borrowdale Branch, had simply fled from this country. It is common cause that this triggered the issuance of a Warrant of Arrest and an Interpol Red Notice against the first respondent.

[18] I pause to record, in a sketch diagram, the dates that the serious offences of theft were committed at the bank by the first respondent and Munhuuripi, the amounts involved, the account prejudiced and false services said to have been supplied to the bank as well as the purported beneficiaries of such payments:

A	B	C	D
DATE	AMOUNT RTGS	SUPSPENCE ACCONT	BENEFICIARY ACCOUNT NAME
29/01/21	ZWL 4412450	Computer Licensing Expenses PL62816	Vetcord Investments 240121913
29/01/21	ZWL 6267350	Card Operating Expenses PL62622	Vetcord Investments 240121913
16/04/21	ZWL6684651	Securities ExpensesPL62700	Simrac Enterprise 31126142
16/04/21	ZWL 6061250	Card Operating Expense PL62622	Vetcord Investments 240121913

[19] The Reserve Bank of Zimbabwe's letter of 27 April 2023, attached to the founding papers, reflects the official exchange rates of the United States dollar to the Zimbabwean dollar as at 29 January 2021 and 16 April 2021. The ZWL\$23 425 701.96 was equivalent to US\$280 046.

[20] On 2 February 2021, Chengetai Dziwa and Sisa Patience Sibanda, who had purchased the right, title and interest in the property which is the subject of this judgment from the third

respondent in terms of an agreement of sale dated 4 September 2016 as read with the addendum *thereto* (dated 2 December 2016), wrote to the third respondent on 2 February 2021:

“31869
Mabvazura
Ruwa

2 February 2021

Danbro Holdings
46 Montgomery road
Highlands
HARARE

ATT: Tendai Manyanda
RC : CESSION OF ARLINGTON
ESTATE CLUSTER
STAND #L8

I hereby write to inform you that I, Chengetai Dziwa ID Number 42 -188369X50 and Sisa Patience Sibanda ID Number 08 -816765P21 wish to cede my right to title for Alington Estate cluster stand number L8 Pelican Street to Nyasha Dumbu ID number 29-213522C77 and Heather Ruvimbo Chikwira ID number 29-264691W25 for the purchase price of US\$95 000-00 (Ninety five thousand United States Dollars) with immediate effect.

I can confirm that I have been paid in full. Please may you instruct your Conveyancers Manokore Attorneys to prepare the Cession Agreement as outlined above. In the agreement please note that it has been agreed that the purchaser shall be responsible for any Capital Gains Tax which may be demanded by ZIMRA.

Thank you in advance for your assistance.

Kind regards

(Signed) (Signed)
Chengetai Dziwa and Sisa Patience Sibanda.”

[21] This letter is clear evidence of the fact that the property in question was sold to the first and second respondents by Dziwa and Sibanda for the sum of US \$95 000. The first and the second respondents' national registration numbers were quoted in the letter by the sellers

themselves. The letter also spelt out the sellers' own national registration numbers and confirmed that they had been paid the purchase price in full. They were instructing the third respondent that its named conveyancers should prepare the Cession Agreement reflecting that the first and second respondents had purchased the property from them (Dziwa and Sibanda). The instruction was that the cession should be with immediate effect. It will be noted that the instructing letter was written on 2 February 2021.

[22] For reasons not explained by the second respondent, Manokore Attorneys drew up the Memorandum of Agreement of Cession reflecting the second respondent as the only cessionary. The first respondent's name was omitted. The court now knows, however, that by the time this Memorandum of Agreement of Cession was signed (17 May 2021) the first respondent had fled this country as the offence committed by him at Munhuuripi and NMB Bank Zimbabwe had been detected.

THE ANALYSIS

[23] I do not accept the second respondent's explanation, which she summarized in paragraphs 16 and 17 of her opposing affidavit in these words:

“ 16... I sorely acquired the stand in question using my own funds generated from the loan I obtained. I deny having acquired the same property with the 1st respondent. The attached cession and agreement of sale clearly confirm that I acquired the stand sorely in my name. I deny having connived with the first respondent in whatever money laundering charges alleged. The same is confirmed by the fact that I have been neither investigated nor arrested for any offence in respect of any money laundering.

17...I deny having involved in any money laundering activities or any concealment thereof with the first respondent. As indicated above, I legitimately acquired the property in question using my own resources obtained from the loan and part of my investments. To confirm that the acquisition of the said property was solely my initiative and enterprise, the same was sold and ceded to me in my name without any involvement of the 1st respondent...”

[24] The Court is aware that the onus lies on the applicant to prove that the property in question is proceeds of crime, in particular that the purchase price was funded, in whole or in part, from the money stolen by the first respondent and Munhuuripi from NMB Bank Zimbabwe.

[25] In disposing of the application the Court takes into account the material placed before it by the applicant and the second respondent. The first, third and the fourth respondents placed nothing before the Court.

[26] It is true that the first respondent has annexed, to her opposing affidavit, a loan agreement with Citizens Legal Funeral and Finance Services (Private) Limited. The document suggests that the latter lent and advanced an amount of US\$100 000to the second respondent who in turn pledged five motor vehicles and “30% share in Vincus Investments (Pvt) Ltd” as security for the loan. The loan agreement is dated 15 January 2021.

[27] Ms Damiso, for the second respondent, urges me to accept, as reasonable, the explanation that the second respondent borrowed US\$100 000 from Citizens Legal Funeral and Finance Services to boost her mining venture, and retained US\$95 000 from the loan amount to purchase the property in question.

[28] This explanation is completely unacceptable. It is just but a bare averment. It is not backed up by any evidence. The fact that the explanation is contained in an affidavit does not transform it into evidence. As already pointed out, it is a bare averment. The loan agreement itself does not reflect the name of the person who signed it on behalf of Citizens Legal Funeral and Finance Services (Private) Limited. All it does, in this regard, is to bear a signature. It does not have provision for the name, signature and dates of signature of Citizens Legal Funeral and Finance Services (Private) Limited’s witness. Indeed, no person ever signed the document as Citizens Legal Funeral and Finance Services (Private) Limited’s witness to the loan agreement. I say also that even the designation of the person who allegedly signed the loan agreement on behalf of Citizens Legal Funeral Services (Private) Limited, and what authority, if any, he or she had to enter into the loan agreement on its behalf and to sign the agreement are conspicuous by their absence. Even though the loan agreement has provision for the name, signature and date of signing by the second respondent’s own witness to the agreement, those portions remain blank. What it means at the end of the day is that the alleged loan agreement was not witnessed by anyone despite its professed significance in that it is supposed to be evidence of the making of a US\$100 000loan agreement secured by 30 percent share in Vincus Investments (Pvt) Ltd, a BMW X5 Registration number ACU 3990 Engine number 5176 2772, a Toyota Hiace Mini Bus Registration Number ADZ4161 Engine number 5L -5338157, a Nissan Caravan Registration

number ACL7180 Engine Number TD 27 -426720W and a Mercedes Vito Registration number AEN 5521 Engine Number 6469 98250099296. The security consisted of apparently extremely valuable properties but the inadequacies in the loan agreement demonstrate that it was a sham. Above all, there is no evidence that the sum of US\$100 000 changed hands between Citizens Legal Funeral and Finance Services (Private) Limited and the second respondent. There also is no evidence that the sum of US\$95000 changed hands between the second respondent on the one hand and Chengetai Dziwa and Sisa Patience Sibanda on the other.

[29] The first and the second counts of the conduct of the first respondent and Munhuuripi constituting or associated with the serious offence of theft of money from NMB Bank Zimbabwe were committed on 29 January 2021. That money was never recovered. Also unrecovered were the proceeds of the further unlawful conduct by the same persons, constituting or associated with theft, on 16 April 2021, of further amounts from the bank. Hot on the heels of the conduct of the first respondent and Munhuuripi, of 29 January 2021, constituting or associated with the theft of the money from the bank, Chengetai Dziwa and Sisa Patience Sibanda wrote to the third respondent instructing it to cede their rights, title and interest in the property in question to the first and the second respondents. The basis of the instruction was that the first and the second respondents had bought such rights, title and interest in the property for the sum of US\$95 000 which amount had been paid in full. Besides this letter there is no paper trail showing that the origin, source and movement of the US\$95 000 was lawful. The only documentary evidence speaking to the payment of the purchase price is the letter itself. Despite the second respondent's protestations that the first respondent and the money he stole from the bank had nothing to do with her own money which she used to fund the purchase price, acceptable evidence clearly indicate the contrary. It is not disputed that the first respondent and Munhuuripi had, acting in connivance, recently stolen huge sums of money from the bank. Four days later, Dziwa and Sibanda wrote to the third respondent in the terms already indicated in this judgment. Where the first and second respondents got the huge amounts to pay the purchase price, a few days after the theft, is, in my, view, directly linked to the theft.

[30] To conceal the second respondent's involvement in funding the purchase price, and hence that proceeds of the theft were employed to finance the purchase price, the first respondent's name is totally omitted from the Memorandum of Agreement of Cession. That

omission was in vain. The uncontroverted evidence of the theft, the first and the second respondent's recent acquisition of the property using no known lawful sources of income to liquidate the purchase price, the first respondent's flight from this jurisdiction, the marital relationship between the first and second respondents coupled with the second respondent's desperate bid to mislead this Court on the source of the money used to fund the purchase price show that the first and the second respondents knowingly converted the money proceeds of the theft by acquiring the property which I have found to be tainted for the purpose of concealing or disguising the illicit origin of such property, and of assisting the first respondent as a person involved in the commission of the serious offence of theft, to evade the legal consequences of the theft.

[31] By couching the memorandum of agreement of cession in such a manner that it omitted any reference to the first respondent as purchaser of the right, title and interest in the property, thus disguising his ownership of and rights with respect to the property, knowing that the property in question is the proceeds of crime, the second respondent, on a balance of probabilities, committed conduct constituting or associated with the serious criminal offence of money laundering.

[32] Indeed, by participating in, associating with, aiding and facilitating the acquisition and transfer of title in the property in question to conceal that it was the proceeds of the serious offence of theft, the second respondent, on the civil standard of proof, committed the offence of money laundering.

[33] Ultimately, I have found that the property itself is proceeds of conduct constituting or associated with the serious offence of theft. Any other conclusion is not possible on the evidence.

[34] This a case where the applicant's decision not to apply for an unexplained wealth order has had no repercussions on the outcome of the application for the order for civil forfeiture of the tainted property. I agree with Mr *Mutangadura* that the applicant's case is solid, rendering it unnecessary to have sought an unexplained wealth order before seeking civil forfeiture of the property in question. Ms *Damiso*'s submissions to the contrary find no favour with me.

ORDER

[35] **In the result, IT IS ORDERED THAT:**

1. The undivided 18668% share number L8 in a certain piece of land situate in the district of Salisbury called stand number 2485 Arlington Estate measuring 2.4 hectares held under Deed of Transfer Registered Number 3113/2017 dated 10 August 2017 is tainted property and is forfeited to the State.
2. The second and the third respondents shall within the next seven days do all such things and complete and sign all such papers and documents necessary to transfer the right, title and interest in the property described in paragraph 1 of this order to the State failing which the Sheriff or his deputy shall do so.
3. The Fourth respondent shall register transfer of the right, title and interest in the property described in paragraph 1 of this order in favour of the State.
4. Each party shall bear its own costs.

CHIKOWERO J

National Prosecuting Authority, applicant's legal practitioners
Zimudzi and Associates, second respondent's legal practitioners